



CITY OF KODIAK
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

CITY MANAGER
TELEPHONE (907) 486-8640
FAX (907) 486-8600

June 2, 1999

LOCAL BOUNDARY COMMISSION
Attn.: Mr. Dan Bockhorst
Department of Community & Regional Affairs
State of Alaska
333 West 4th Avenue
Anchorage, Alaska 99501-2341

RECEIVED

JUN 03 1999

Local Boundary Commission
DCRA/MRAD

Dear Mr. Bockhorst:

To assist in your review and the Commission in its discussion I have attempted to organize my response in the order of the attachments. In many instances I simply refer to the transition report as a response to keep this brief just that...brief.

RESPONDENT'S AFFIDAVIT from Mr. Sidney G. Pruitt Jr.

In the first two pages of his affidavit Mr. Pruitt provides a history of land development within Service Districts 1 and 2. As a resident of this area Mr. Pruitt has first hand knowledge of its development that the City accepts as represented. The City of Kodiak has not, nor does it now exercise land use regulation. The Kodiak Island Borough has the Planning power pursuant to Title 29 and annexation would not provide any more or less protection from subdivision or rezoning than existed during the period described.

On page 3 the respondent is partially correct. The City of Kodiak responded to a petition from residents of Service District 1 only as an expression of interest and subsequently submitted the petition you have before you. The inclusion of the entire Fire Service District was done at the suggestion of the Kodiak Island Borough Assembly. The City of Kodiak made a conscious decision not to set conditions upon which it would consider annexation. The Fire service District had only recently expanded to include the area to the end of the road. Ironically it is Mr. Pruitt as a resident of the Fire Service District who is currently providing protection to the **CEMENT BLOCK OUT-HOUSE**. Annexation would spread the cost of that protection more broadly.

The area proposed for annexation is accessed by the continuation of the community's major highway. To annex only Service District 1 would leave a relatively small enclave of residents to continue existing services.

Page 5 of the affidavit again speaks to the quality of life issue. Although I appreciate Mr. Pruitt's perception I do not agree that lot size and population are the determining factors. Again the land use is the issue and the City of Kodiak will not assume that responsibility. The potential of the City to provide sewer and water is a factor of need and ability, not cost. If on-site water and septic systems were to become

contaminated or inoperable then I can only assume that public services would be "required" and provided for in the same manner as was done in Service District 1.

Page 6 argues the cost of lot development. The City is not in a position to take issue with the figures since no design or cost proposal has yet been developed. The City believes that annexation will remove an artificial boundary and make us a single community in law where we are now a community by proximity.

The issue of traffic congestion is difficult to quantify. Annexation does not change the land use. Development that occurs, with or without annexation, will undoubtedly increase traffic. I do not see a correlation between annexation and traffic congestion.

Pages 7 through 11 provide statistics to refute the **Transition Plan** developed by the City staff. The City has a great deal of expertise and experience in providing Police, Fire, Parks & Recreation and Public Works to its citizens. The preparation of the respective portions of the plan by the responsible department head was done carefully and with the understanding that what was promised would be delivered. If one is going to argue that a vast portion of the area is undeveloped then one should be willing to accept that little or no direct service would be provided, e.g., the watershed. To put a point on it, the City assumed ownership and operation of the sewer and water system in Service District 1 in late 1997. The initial savings on the monthly bill to the residents of the district was \$22.00. It is my opinion that the residents are receiving a higher level of service for less money...*quod erat demonstratum*. In prior annexation efforts there was criticism that the proposals lacked specifics. The Transition Plan for this annexation petition was written to avoid that concern and provide the public with the information to make a choice.

Mr. Pruitt has previously communicated his position to the City and appeared at the public hearing on Ordinance 1065 authorizing this petition. In taking his personal time to be involved and by articulating his positions in a fair and open manner he has done much to make the process work.

Letter from Robert Himes

The City of Kodiak City Manager met with the Service District Board prior to the development of the plan. More than 500 copies of the plan were distributed. One of the points of distribution was the Bayside Fire Department. It was not the intent of the City of Kodiak to adjust its staffing to accommodate a Deputy Fire Chief. The individual could compete for any vacant position for which qualified, but the appointment on a non-competitive basis would be for the only position created by annexation. The Training Center continues to be a training center since no changes were identified in the Transition Plan. There is not now, nor was there ever any intent to offend Chief Himes.

Fax from James P. "Jake" Jacobson

I respect Mr. Jacobson's objection to being annexed into the City of Kodiak. As to his reasons:

1. There is no threat to subsistence status by this annexation. (See attached letter)
2. The AHFC Rural Loan Program will no longer be available. This was stipulated in the transition plan.
3. Restrictions on keeping livestock are outlined in the transition plan with grandfather provisions.

4. No change in firearms regulation as City is adopting State Statute which already governs the Borough.
5. No identifiable restrictions on hunting (see #4).
6. Only identifiable cost increase to living would be sales tax within the annexed area.
7. City services are tangible and highly beneficial.
8. The City made no representation that annexation would lead to consolidation.

Letter from Marian Johnson

No comment

Letter from John A Parker

No comment

Letter from Lee & Bonnie Russell

No comment

Letter from Giovanni Tallino

No comment

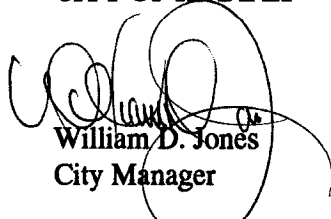
Letter from Pedersen, King and Torgamsen

No comment

The City of Kodiak appreciates the effort that a petition requires of all those that participate. We look forward to the Public Hearing. If you have any further questions or if I have confused an issue please do not hesitate to call.

Respectfully

CITY OF KODIAK



William D. Jones
City Manager

cc: Mayor and City Council



CITY OF KODIAK
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

CITY MANAGER
TELEPHONE (907) 486-8640
FAX (907) 486-8600

May 4, 1999

Mr. Jake Jacobson
P.O. Box 1313
Kodiak, Alaska 99615

Dear Mr. Jacobson:

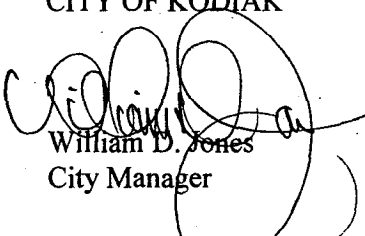
Since our last conversation on subsistence it has become the topic of a great deal of the discussion on annexation. To try and get a handle on who was doing what I contacted both the State of Alaska, Department of Fish and Game and the U.S. Fish and Wildlife Service. Although it was a trial by phone it was successful in getting two specific definitions.

As long as the State of Alaska retains the authority every Alaskan is eligible to subsistence fish. There is no preference for where in Alaska you live or the size of your community. The Federal authorities have also put out their regulations and all of the Kodiak Island Borough, including the City, has been determined rural and everyone would be eligible for subsistence fishing.

I have not pursued the issue of game and I would defer to your knowledge on the subject. I've enclosed the Federal Register with the sections referred to above highlighted and a copy of an E-Mail from Fish and Wildlife. Jake, please drop by for coffee if what I have enclosed raises questions, or just for coffee.

Respectfully,

CITY OF KODIAK



William D. Jones
City Manager

cc: Borough Assemblyman Arndt
Borough Assemblyman Spalinger
City Councilman Walters

To: bjones@city.kodiak.alaska.us
cc: Bill Knauer/R7/FWS/DOI@FWS
From: FWOHUB1/FWS/DOI
Date: 05/04/99 01:57:55 PM YDT
Subject: Definition of subsistence

City Manager Jones:

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade.

Regarding the annexation, it will/should not make any difference as Kodiak is considered a "rural" community.

If you have any further questions, please feel free to call our office at 1-800-478-1456.

recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of Section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to § __.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under these regulations, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

§ __.12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § __.11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§ __.13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§ __.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented

subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§ __.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § _____.23.

§ _____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § _____.24.

§ _____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b) (1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§ _____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule. The Board may establish a rotating schedule for accepting proposals on various parts of subpart D regulations over a period of years. The Board shall develop and publish proposed regulations in the Federal Register and publish notice in local

newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § _____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the Federal Register.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the Federal Register and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted within the time period as specified by the Board or as a part of the Regional Council's annual report described in § _____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

Area	Species	Determination
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA:		
Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder	All fish	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than steelhead and rainbow trout.	Residents of the Chignik Area.
	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA —except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52' North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11'22" North latitude, 156°20'30" W longitude).		
Kodiak Area	Fish other than steelhead and rainbow trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
PRINCE WILLIAM SOUND AREA:		
South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitiek and Ellamar.
Glennallen Subdistrict of the Upper Copper River District and the waters of the Copper River.	Salmon	Residents of the Prince William Sound Area.
Copper River District—remainder.	Salmon	Residents of the Prince William Sound Area.
YAKUTAT AREA:		
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1-E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1-F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.

**STATE OF ALASKA
LOCAL BOUNDARY COMMISSION**

CERTIFICATE OF SERVICE

I certify that on the second day of June, 1999, a true original of THE PETITIONER'S RESPONSE TO BRIEFS FILED REGARDING THE PETITION FOR ANNEXATION OF TERRITORY TO THE CITY OF KODIAK was posted via U.S. mail to:

**Local Boundary Commission
Alaska Department of Community and Regional Affairs
333 W. 4th Avenue, Suite 220
Anchorage, AK 99501-2341**

and that a copy was transmitted by electronic mail to:

DBOCKHORST@comregaf.state.ak.us

and that a copy was transmitted by facsimile to:

**Local Boundary Commission
Alaska Department of Community and Regional Affairs
907-269-4539**

and a copy was delivered to each of the following via U.S. mail:

Robert Himes
4606 Rezanof Drive East
Kodiak, AK 99615

Giovanni Tallino
P. O. Box 4496
Kodiak, AK 99615

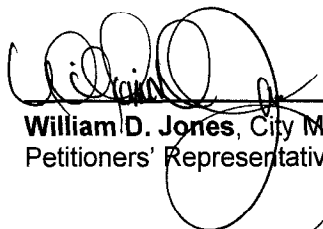
Marian Johnson
P. O. Box 945
Kodiak, AK 99615

Sidney G. Pruitt, Jr.
P. O. Box 395
Kodiak, AK 99615

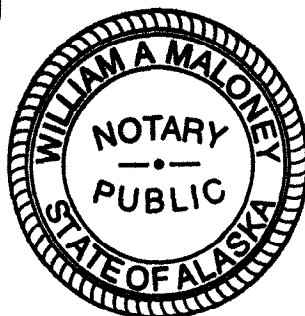
John A. Parker
P. O. Box 191
Kodiak, AK 99615

Kurt and Liza Pedersen
P. O. Box 2407
Kodiak, AK 99615

Lee and Bonnie Russell
P. O. Box 9024
Kodiak, AK 99615



William D. Jones, City Manager
Petitioners' Representative



State of Alaska)
) ss.
Third Judicial District)

Subscribed and sworn before me this 2nd day of JUNE, 1999 by William D. Jones, personally known to me to be the City Manager for the City of Kodiak.



William A. Maloney
Notary Public for the State of Alaska

My commission expires December 8, 2002.